

State of California
AIR RESOURCES BOARD

Resolution 98-48

September 24, 1998

Agenda Item No.: 98-10-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board ("Board") to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, in 1989, the Board adopted adjudicatory hearing procedures, title 17, California Code of Regulations, sections 60040 through 60053 to address administrative appeals of Executive Officer decisions, including decisions to revoke or suspend licenses for vehicle emission laboratories and certification of motor vehicles and motor vehicle engines and to recall motor vehicles and engines;

WHEREAS, in 1991, pursuant to section 44011.6 of the Health and Safety Code, the Board adopted administrative hearing procedures, title 17, California Code of Regulations, sections 60075.1 through 60075.47, to review citations issued under the Heavy-Duty Diesel Roadside Smoke Emission Testing and Heavy-Duty Vehicle Emission Control System Inspections Program, title 13, California Code of Regulations, sections 2180 through 2188 (Roadside Inspection Program);

WHEREAS, in 1995, SB 163 (Stats. 1995, Ch. 966, Sec. 3) was enacted entrusting the Board with authority to assess administrative penalties for violations pertaining to the fuel requirements and standards adopted by the Board (Health and Safety Code section 43028) and to adopt administrative hearing procedures to review such assessments (Health and Safety Code section 43031(a));

WHEREAS, in 1995 and 1996, the Legislature amended the Administrative Procedure Act ("APA", Stats 1995, Ch.938 (SB 523) and Stats. 1996, Ch. 390 (SB 794)), to promote greater uniformity in state agency hearing procedures; make state agency hearing procedures more accessible to the public; improve fairness of state agency hearing procedures; and modernize and add greater flexibility to state agency hearing procedures;

WHEREAS, staff experience in using the existing administrative hearing procedures has demonstrated a need to modify the procedures to better inform the parties of their rights and responsibilities and to make clearer the obligations of the administrative hearing office and decision makers who issue decisions and orders;

WHEREAS, staff has proposed amendments to the existing administrative hearing procedures for the Roadside Inspection Program to broaden application of the procedures to include the review of less complex and less serious fuel-related violations arising under section 43028 of the Health and Safety Code;

WHEREAS, staff has further proposed the adoption of new administrative hearing procedures for the review of the more serious and complex fuel-related violations arising under section 43028 of the Health and Safety Code and for the review of Executive Officer decisions, respectively codified in title 17, California Code of Regulations, sections 60065.1 through 60065.45 and sections 60055.1 through 60055.43;

WHEREAS, the amendments and the proposed new hearing procedures incorporate provisions, including provisions from the amended APA, that clearly delineate the rights and responsibilities of the parties to the hearing and the obligations of the administrative hearing office and adjudicators;

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code; and

WHEREAS, the Board finds that:

Principles of due process and other provisions of state law require that persons alleged to have violated the standards of the Roadside Inspection Program or the provisions of Part 5 of the Health and Safety Code or any rule, regulation, permit, variance, or order of the Board pertaining to fuel requirements and standards and persons adversely affected by certain Executive Officer decisions shall be afforded an opportunity for an administrative hearing;

The proposed procedures provide that the affected persons described in the paragraph above shall be given notice and an opportunity to be heard, an opportunity to present evidence, confront and cross-examine witnesses, the right to discover facts and things

relevant to his or her case, the right to representation by an attorney or other person, the means to obtain a hearing record, and the right to a written decision based on the record and supported by findings of fact;

The proposed procedures govern the conduct of administrative hearings and provide for a full and fair hearing by an impartial hearing officer;

The economic and cost impacts of the proposed regulations have been analyzed as required by California law, and that there will be no adverse impacts because of these regulations; and

Pursuant to the requirements of CEQA and title 17, CCR, section 60006, the proposed regulations will have no potential adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 60040 through 60053 and 60075.1 through 60075.45, and the adoption of sections 60055.1 through 60055.43 and 60065.1 through 60065.45, title 17, California Code of Regulations as set forth in Attachment A, with the modifications described in Attachment B that are consistent with the following additional modifications: Section 60055.15 shall be amended consistent with Exhibit H of the Comments of the American Automobile Manufacturers Association, attached hereto as Attachment C; section 60055.17 shall be amended to provide the Board with authority to consider petitions that a hearing be referred to the State Office Administrative Hearings on grounds that a party cannot receive a full and fair hearing before hearing officers from the administrative hearing office of the Air Resources Board.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to provide to the stakeholders a written description of the reorganization of the Air Resources Board to assure the independence of the administrative hearing office;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the sections referenced above, after making the modified regulatory language and any additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

I hereby certify that the above is a true and correct copy of Resolution 98-48, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

Resolution 98-48

September 24, 1998

Identification of Attachments to the Resolution

Attachment A: Proposed amendments to sections 60040-60053 and 60075.1-60075.45 and adoption of sections 60055.1-60055.43 and 60065.45 as set forth in the Staff Report: Initial Statement of Reasons.

Attachment B: Staff's suggested modifications to the original proposal as distributed at the Board Hearing on September 24, 1998.

Attachment C: Exhibit H from the Comments of the American Automobile Manufacturers Association Responding to Notice of Public Hearing to Consider Amendments to Procedures for Adjudicatory Hearings and Administrative Hearings for Citations Issued under the Heavy-Duty Vehicle Roadside Smoke and Tampering Inspection Program (Roadside Inspection Program) and Adoption of Procedures for Administrative Hearings for Review of Complaints and Petitions for Review of Executive Officer Decisions.